

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JULIE DERMANSKY,

Plaintiff,

- against -

HEAVY INC.

Defendant.

Docket No. 1:17-cv-7258

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Julie Dermansky (“Dermansky” or “Plaintiff”) by and through her undersigned counsel, as and for her Complaint against Defendant Heavy Inc., (“Heavy” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a yellow eyed taxidermy owned and registered by Dermansky, a New Orleans based photojournalist. Accordingly, Dermansky seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides in and/or transacting doing business in New York and is registered to do business in the State of New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Dermansky is a professional photojournalist in the business of licensing her photographs to online and print media for a fee having a usual place of business at 2357 Cours Carson Street, Mandeville, LA 70448.

6. Upon information and belief, Heavy is a foreign business corporation duly organized and existing under the laws of the State of Delaware, with a place of business at 330 West 38th Street, #1002, New York, New York 100018. Upon information and belief, Heavy is registered with the New York Department of State, Division of Corporations to do business in the State of New York. At all times material hereto, Heavy has owned and operated a website at the URL: www.Heavy.com (the “Website”).

STATEMENT OF FACTS

A. Background and Plaintiff’s Ownership of the Photograph

7. Dermansky photographed a yellow eyed taxidermy (the “Photograph”). A true and correct copy of the Photograph is attached hereto as Exhibit A.

8. Dermansky is the author of the Photograph and has at all times been the sole owner of all right, title and interest in and to the Photograph, including the copyright thereto.

9. The Photograph was registered with United States Copyright Office and was given Copyright Registration Number VA 2-062-374.

B. Defendant’s Infringing Activities

10. Heavy ran an article on the Website entitled *The 20 Worst Pieces of Terrible Taxidermy Vol. 2*. See <http://heavy.com/social/2013/06/20-worst-pieces-of-terrible-taxidermy-part-2/17/>. The article prominently featured the Photograph. A true and correct copy of the article with the Photograph is attached hereto as Exhibit B.

11. Heavy did not license the Photograph from Plaintiff for its article, nor did Heavy have Plaintiff's permission or consent to publish the Photograph on its Website.

12. Plaintiff first discovered the Photograph on the Website on August 24, 2017.

13. The article was written by a staff manager of Heavy.

14. The photograph appears on Heavy's computer servers.

CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST HEAVY)
(17 U.S.C. §§ 106, 501)

15. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-14 above.

16. Heavy infringed Plaintiff's copyright in the Photograph by reproducing and publicly displaying the Photograph on the Website. Heavy is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photograph.

17. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

18. Upon information and belief, the foregoing acts of infringement by Heavy have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

19. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Heavy be adjudged to have infringed upon Plaintiff's copyrights in the Photograph in violation of 17 U.S.C §§ 106 and 501;
2. Plaintiff be awarded Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photograph;
3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
4. That Plaintiff be awarded pre-judgment interest; and
5. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
September 24, 2017

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